

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 624 OF 2005

John F. D'Costa & Ors. .. Petitioners

V/s

The Commissioner
Mumbai Municipal Corporation & Ors. .. Respondents

Mr. Shyam Diwan i/b Mr. Sanjeev Sawant for the
Petitioners.

Mr. A. Sayyed, A.G.P. for Respondent No.2.

Ms. A.K. Savla for Respondents Nos.1 and 3.

Mr. G.D. Utangale for Respondent No.4.

Mr. P.K. Dhakephalkar with Mr.Vipin Kamdi for
Respondent No.5

Mr. M.S. Anand for Respondent No.6.

CORAM : H.L. GOKHALE &
S.C. DHARMADHIKARI, JJ.

DATE : 29TH APRIL 2005

P.C. :

1. Heard the learned counsel for the parties.

2. The Petitioners herein are tenants of municipal property. They are being clubbed along with a large number of hutments which are being developed under D.C. Regulation 33(10). Their case is that being regular municipal tenants in municipal chawls, they were entitled to equivalent area under D.C. Regulation

33(7). However, inasmuch as it is an amalgamated project, some appropriate way out has to be found out. As far as the area under occupation of the Petitioners is concerned, Mr. Rajesh Pagar, Sub-Engineer, G/North Ward, has filed an affidavit. Mr. Diwan, learned counsel for the Petitioners, does not dispute the statement contained in the said affidavit to the extent of the area occupied by the concerned tenants. From amongst these tenants, what we find is that Shri John D'Costa and Shri Ernest D'Costa, who are Petitioner Nos. 1 and 2, are having two structures which are having space of 755 sq.ft. and 300 sq.ft. respectively. Thus, they are having an area of over around 1000 sq.ft. Similarly, Petitioner No. 5 - Shri Surve is having an area of 369 sq.ft. and Petitioner No. 7 Shri Bhagat and Petitioner No. 8 Shri Rangnekar are also having area of 369 sq.ft. each. It will be therefore in the fitness of things that since dwelling units of 225 sq.ft. are constructed, the first two Petitioners together be given 3 units of 225 sq.ft. and as far as Petitioner Nos. 5, 7 and 8 are concerned, they will be eligible to an area of 1 1/2 unit each. It will be open to the developers to take 3 adjoining units and divide them into 2 equivalent units to see to it that these persons get an area by and large equivalent to what was their earlier area. As far as the other Petitioners are concerned, their relatives

are getting appropriate area in the reconstructed building and, therefore, no other provision is being made for them except Petitioner Nos.9 and 10 for whom it is agreed that they will shift to some other residence in the same locality and they will be financially compensated.

3. As far as the other three Petitioners, i.e. Petitioner No.3 Smt. Bania, Petitioner No.4 Smt. Sheela and Petitioner No.6 Shri Patil, are concerned, the allotment will be in the name of their relatives. They will also be entitled to get an area equivalent to 1 1/2 units. We had asked the society and the developer to place on record as to whether there are any other person similarly situated. A list has been filed. They are persons staying in hutments in the slum colony and, therefore, they will be eligible only to the area of 225 sq.ft.

4. Petition stands disposed of.

(H.L. GOKHALE, J.)

(S.C. DHARMADHIKARI, J.)